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AUTHOR	Franzel, Jeanette M.
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ABSTRACT

The District of Columbia passed appropriation acts for fiscal years 1999, 2000, and 2001 to limit the amount of appropriated funds that could be paid to an attorney representing a prevailing party in an action brought against District of Columbia Public Schools (DCPS) under the Individuals with Disabilities Education Act (IDEA). A study investigated court mandated attorneys' fees paid by the District of Columbia Public Schools (DCPS) and attorneys' fees awards that were in excess of the appropriation act's limitations. A review of DCPS's February 28, 2002, report on Individuals with Disabilities Education Act awards and payments for fiscal years 1999, 2000, and 2001 indicates the appropriation act's limitations had little if any impact on the total amount awarded by the courts for the attorneys' fees of prevailing parties. Court decisions make it clear that the appropriation act's limitations applied only to the amount that the District could pay to a prevailing party under IDEA and not the amount that the court could award. The decisions also make it clear that where there in an independent legal basis to award attorneys' fees, such as the Civil Rights Act, the court could do so without regard to the appropriation act's limitations. (CR)

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May 22, 2002

Congressional Subcommittees

Subject: DCPS: Attorneys' Fees for Access to Special Education Opportunities

The District of Columbia Public Schools (DCPS) has had difficulty meeting the obligation to its special education students under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) (IDEA). By 1998, DCPS was experiencing serious problems in conducting timely hearings requested by parents under IDEA and in issuing final decisions within the required timelines. This, in turn, resulted in an increasingly large number of parental complaints and legal suits filed against DCPS to obtain access to the educational opportunities called for under the act. As a result, the amount of attorneys' fees awarded to parties who prevailed in the IDEA cases became costly to the District of Columbia.

The District of Columbia Appropriations Acts for fiscal years 1999, 2000, and 2001 limited the amount of appropriated funds that could be paid to an attorney representing a prevailing party in an action brought against DCPS under IDEA. Section 140(b) of the District of Columbia Appropriations Act for fiscal year 2002 (Public Law No. 107-96, 115 Stat. 923, 958 (2001)) directed the Superintendent of DCPS to report to the House and Senate Appropriations Committees a complete itemized list of attorneys' fees awarded by a court to plaintiffs who had prevailed in these types of cases against the District of Columbia or DCPS under section 615(i)(3) of IDEA (20 U.S.C. § 1415(i)(3)). The report was to include the amount of each award, the amount paid on each award, unpaid balances on each award, as well as other information. DCPS provided its final report to the House and Senate Appropriations Committees on February 28, 2002.

Section 141 of the District of Columbia Appropriations Act for fiscal year 2002 also directed that we report on this topic. We were directed to identify attorneys' fees awarded by the courts to prevailing plaintiffs that were in excess of the appropriations acts' limitations. Section 141 also directed us to provide a comparison, to the extent practicable, of the causes of actions and judgments rendered against public school districts with demographics and population comparable to those of the District.

This letter confirms the agreement reached between the staff of the subcommittees and GAO as a result of our briefing on March 15, 2002, and includes the information we presented at the briefing. As a result of the briefing, it was agreed that the information provided satisfied our reporting requirement under section 141 and that no additional work is required.

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Results in Brief

Based on our limited review of DCPS's February 28, 2002, report on IDEA awards and payments for fiscal years 1999, 2000, and 2001, we determined that the appropriations acts' limitations had little if any impact on the total amount awarded by the courts for the attorneys' fees of prevailing parties for action brought against DCPS under IDEA. Our review included the decisions cited by the DCPS report with respect to the courts' authority to award attorneys' fees in excess of the appropriations acts' limitations. The court decisions make it clear that the appropriations acts' limitations applied only to the amount that the District could pay to a prevailing party under IDEA and not the amount that the court could award. The decisions also make it clear that where there is an independent legal basis to award attorneys' fees, such as the Civil Rights Act, the court could do so without regard to the appropriations acts' limitations. Therefore, for the awards included in the DCPS report of February 28, 2002, the appropriations acts' limits on the payment of fees awarded by the courts to an attorney of a prevailing party under IDEA had little or no impact on the amount of fees awarded to an attorney representing a prevailing party under IDEA.

To address the requirement to provide a comparison, to the extent practicable, of causes of actions and judgments rendered against school districts of comparable demographics and population to the District, we reviewed data for the District and five other school districts and found that the number of civil action decisions where parents prevailed and the awards for attorneys' fees varied vastly. We believe factors such as the history and scope of special education programs, as well the likelihood of a district's success in prevailing in IDEA complaints, can significantly affect the number and types of cases a school district faces. Therefore, we believe these factors need to be considered when comparing data for attorneys' fees awarded under IDEA across school districts.

Background

Attorneys' fees provisions under IDEA provide the courts with the discretion to award reasonable attorneys' fees to prevailing parties in actions brought under IDEA. However, the District's appropriations acts for fiscal years 1999, 2000, and 2001 imposed limits on the amounts payable for attorneys' fees on a per hour and per case basis.[1] Table 1 shows the limits that the 1999, 2000, and 2001 appropriations acts for the District placed on amounts payable to attorneys as fees for representing prevailing parties in actions brought under IDEA.

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[1]See Public Law No. 105-277, § 130, 112 Stat. 2681, 2681-138 (1998) (D.C. fiscal year 1999 appropriation); Public Law 106-113, § 129, 113 Stat. 1501, 1517 (1999) (D.C. fiscal year 2000 appropriation); and Public Law No. 106-522, § 122, 114 Stat. 2440, 2464 (2000) (D.C. fiscal year 2001 appropriation).

Table 1: Limitations on Attorneys' Fees for Prevailing Parties for IDEA Cases

Fiscal year	Hourly rate	Limit per case
1999	$50	$1,300
2000	60	1,560
2001	125	2,500

In preparing its February 28, 2002, report to the Congress, DCPS sought to identify all awards of attorneys' fees in IDEA suits as defined by section 140(b) of the 2002 appropriations act. The DCPS report to the Congress itemized the amounts for attorneys' fees awarded to prevailing parties under IDEA for fiscal years 1999, 2000, and 2001. DCPS's report shows that for the 3-year period, $3.2 million was awarded for attorneys' fees, interest payments, and litigation costs.[2] Detailed schedules included with the February 28, 2002, DCPS report indicated that, as of the date of its report, no further balances were due on the awards shown in the report.

Scope and Methodology

Because the information necessary to prepare the DCPS report under section 140(b) was the same information that we would need to prepare our report, we reviewed the DCPS February 28, 2002, report and DCPS's methodology for compiling the underlying data, and concluded that DCPS's approach for gathering the information used to support the report was reasonable. We also reviewed the DCPS report's discussion of judicial decisions affecting the award and payment of attorneys' fees during the period covered by the review and found it to be an accurate representation of the law. This was further supported by our review of nine court orders provided by DCPS. We concluded that the detail contained in the nine court orders was consistent with the information included in the DCPS report.

We also held meetings with DCPS and District officials and representatives to understand the procedures they used to identify, compile, and report the DCPS information to the Congress. In addition, we gained an understanding of the procedures DCPS and the District took to ensure the completeness of the population of cases identified as being brought under IDEA and the validity of the data in the DCPS February 28, 2002, report. We relied on the information provided by DCPS and did not determine the completeness, accuracy, or validity of the attorneys' fees information DCPS reported to the Congress in its February 28, 2002, report.

In order to identify school districts with some comparable demographics and population characteristics as the District, we used U.S. Department of Education data from the *Local Education Agency Universe Survey: School Year 1999-2000*[3] to

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[2]Included in the total are amounts awarded to a Special Master appointed by the U.S. District Court, District of Columbia, to assist the court in resolving individual requests for immediate injunctive relief. Awards to the Special Master do not represent payments to prevailing plaintiffs but are made for reasonable fees and expenses incurred by the Special Master in carrying out court-ordered duties and responsibilities.

[3]The August 2001 survey is part of the Common Core of Data Nonfiscal surveys, which consist of data submitted annually to the National Center for Education Statistics by state education agencies, the District of Columbia, American Samoa, Guam, the Commonwealth of the Mariana Islands, Puerto Rico,

collect district and special education enrollment information. In addition, we collected student ethnicity information from several school districts. After reviewing total student enrollment, minority enrollment, and the percentage of special education students from several school districts, we identified three districts with some similar demographics as DCPS—Oakland Unified School District, Oakland, California; St. Louis City Public Schools, St. Louis, Missouri; and San Antonio Independent School District, San Antonio, Texas. In addition, we collected similar information from two school districts adjacent to the District—Montgomery County Public Schools, Rockville, Maryland, and Fairfax County Public Schools, Fairfax, Virginia.

In order to determine the number of court decisions and the amount of attorneys' fees paid by these school districts, we collected data from each school district's office of special education and information from DCPS's February 28, 2002, report. We also interviewed school district officials to gain an understanding of each districts' procedures for processing civil actions brought under IDEA.

As a result of our limited review, we consulted with subcommittee staffs and explained our findings. It was agreed that this satisfied section 141's requirements. We conducted our work from January through March 2002 in accordance with generally accepted government auditing standards.

We provided our draft letter to DCPS officials and the District's Office of the Chief Financial Officer for their review and comment. We received correspondence from the District's Office of the Chief Financial Officer indicating that it had no comments on our letter. DCPS provided suggested technical and clarifying comments on this letter, which we incorporated as appropriate.

Judgment Awards by the Court for Attorneys' Fees Were Not Limited

The DCPS report shows amounts awarded by the courts in excess of the limitations established by the appropriations acts. DCPS's February 28, 2002, report identified 99 payments related to court-ordered awards of attorneys' fees and payments to a court-appointed Special Master in the amount of $3.2 million. We noted that, for the nine court orders we reviewed, either the District's Office of Corporation Counsel (OCC) or DCPS's Office of General Counsel attorneys conducted reviews of the orders issued by the courts and documented their review in memorandums, which summarized the amounts that the presiding judges required the District pay prevailing parties and the timing of the such payments.

In some cases where the court awarded attorneys' fees in excess of appropriations acts' limits, the District obtained court orders delaying required payment of the excess attorneys' fees until subsequent litigation could address the court's authority to award and the District's authority to pay the fees. The resulting court decisions make it clear that the limitations in the 1999, 2000, and 2001 appropriations acts

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the Virgin Islands, the Department of Defense, and the Bureau of Indian Affairs regarding the most recent relevant information available about student, staff, and graduate counts for public elementary and secondary education agencies.

applied only to the District's authority to make payments for attorneys' fees awarded under IDEA and not to the court's authority to make awards in excess of the cited limitations. The decisions also make it clear that when another law, for example, the Civil Rights Act,[4] provided an independent legal basis for awarding attorneys' fees, the appropriations acts' limitations did not apply. Finally, in some instances the court ordered payments to be made by a date certain with interest to run against the District if they were not paid by that date. Therefore, the limit on the payment of fees awarded to an attorney of a prevailing party under IDEA had little, if any, impact on the amount of fees awarded by the courts.

Tables 2 through 5, which are reproduced from DCPS's February 28, 2002, report, provide information regarding the court-ordered attorneys' fees to prevailing IDEA plaintiffs in fiscal years 1999, 2000, and 2001 and a summary of the court-ordered attorneys' fees for the 3-year period. In total, the DCPS report identified 99 payments related to court-ordered awards of attorneys' fees and payments to a court-appointed Special Master in the amount of $3.2 million for the 3-year period of which $2.9 million was for immediate payment. Detailed schedules included with the February 28, 2002, report indicated that as of the date of its report, no further balances were due on the judgments shown in the report. This information is taken from the DCPS February 28, 2002, report and is presented for informational purposes only. Accordingly, we have not determined the completeness, accuracy, or validity of the attorneys' fees information that DCPS reported.

Table 2: Attorneys' Fees to Prevailing IDEA Plaintiffs in Fiscal Year 1999

	Total Judgments	Judgments for immediate payment
Awards paid by OCC	$286,925	$222,726
Awards paid by DCPS	342,055	179,514
Subtotal	628,980	402,240
Awards to Special Master	116,492	116,492
Total	**$745,472**	**$518,732**

Source: Unaudited table from the DCPS February 28, 2002, report.

[4]In the District of Columbia, attorneys' fee awards under the Civil Rights Act and payments may cover not solely attorneys' "fees" in a sense of compensation for the hours spent by attorneys in litigating matters, but also hourly compensation for paralegals and other attorney assistants, as well as standard expenses of litigation such as copying, messenger, and filing costs. Fee requests also may include expert witness fees.

Table 3: Attorneys' Fees to Prevailing IDEA Plaintiffs in Fiscal Year 2000

	Total judgments	Judgments for immediate payment
Awards paid by OCC	$440,972	$241,462
Awards paid by DCPS	98,194	24,926
Subtotal	539,166	266,388
Awards to Special Master	218,401	218,401
Total	**$757,567**	**$484,789**

Source: Unaudited table from the DCPS February 28, 2002, report.

Table 4: Attorneys' Fees to Prevailing IDEA Plaintiffs in Fiscal Year 2001

	Total judgments	Judgments for immediate payment
Awards paid by OCC	$1,268,362	$1,384,522
Awards paid by DCPS	1,743	18,085
Subtotal	1,270,105	1,402,607
Awards to Special Master	471,619	471,619
Total	**$1,741,724**	**$1,874,226**

Source: Unaudited table from the DCPS February 28, 2002, report.

Table 5: Attorneys' Fees to Prevailing IDEA Plaintiffs in Fiscal Years 1999 through 2001

	Total judgments	Judgments for immediate payment
Awards paid by OCC	$1,996,258	$1,848,708
Awards paid by DCPS	441,993	222,526
Subtotal	2,438,251	2,071,234
Awards to Special Master	806,513	806,513
Total	**$3,244,764**	**$2,877,747**

Source: Unaudited table from the DCPS February 28, 2002, report.

Comparability with Other School Districts

Section 141 also directed us to provide a comparison, to the extent practicable, of causes of actions and judgments rendered against public school districts of comparable demographics and population to the District. We identified three school districts—Oakland Unified School District, St. Louis City Public Schools, and San Antonio School District—for this purpose based on total student enrollment, minority enrollment, and percentage of special education students. In addition, we collected similar information from two school districts adjacent to the District—Montgomery County Public Schools, Rockville, Maryland, and Fairfax County Public Schools, Fairfax, Virginia. (See table 6.)

Table 6: Characteristics of Selected School Districts, 2001 through 2002 School Year

Enrollment by ethnicity (%)	District of Columbia	Oakland Unified[a]	St. Louis City	San Antonio Dependent	Montgomery County	Fairfax County
Hispanic	6,160 (9%)	15,875 (30%)	513 (1%)	49,453 (86%)	21,731 (16%)	22,556 (14%)
African American	57,498 (84%)	23,813 (45%)	33,226 (81%)	5,544 (10%)	28,426 (21%)	16,909 (10%)
Asian American	1,369 (2%)	8,467 (16%)	596 (1%)	147 (0%)	17,895 (14%)	25,771 (16%)
White	3,422 (5%)	3,175 (6%)	6,786 (17%)	2,282 (4%)	65,849 (49%)	89,530 (56%)
Other[a]	0	1,588 (3%)	37 (0%)	36 (0%)	407 (0%)	5,818 (4%)
Total enrollment	**68,449**	**52,918**	**41,158**	**57,462**	**134,308**	**160,584**
Enrollment by students in Special education (%)[b]	11,659 (17%)	5,767 (11%)	7,257 (18%)	7,656 (13%)	16,369 (12%)	22,162 (14%)

(a) "Other" includes racial categories such as multiracial, Alaskan, or American Indian.

(b) Count reflect students with Individualized Education Programs, which are written statements for each child with a disability indicating information such as child's education performance level and goals.

(c) Used percentage given by the school district to derive number of students.

Source: School districts' offices of special education.

Among these school districts, the number of court decisions where parents prevailed, as well as instances in which attorneys' fees were awarded, varied. (See table 7.) For example, the Oakland Unified School District, St. Louis City Public Schools, and San Antonio Independent School District had no court decisions issued during fiscal years 1999 through 2001. In contrast, in its February 28, 2002, report, DCPS showed 27 individualized civil action cases brought under IDEA where parents prevailed and attorneys' fees were awarded. This resulted in 99 payments related to court-ordered awards of attorneys' fees and payments to a court-appointed Special Master in the amount of $3.2 million in the District.

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Table 7: Court Decisions Where Parents Prevailed and Attorneys' Fees Awarded for Selected School Districts, Fiscal Years 1999 through 2001

Action	District of Columbia[a]	Oakland Unified	St. Louis City	San Antonio Dependent	Montgomery County	Fairfax County
Number of decisions where parents prevailed	27	0	0	0	4	1
Number of attorneys' fees awarded	99	0	0	0	4	0
Amount of attorneys' fees (dollars in thousands)	**$3,200**	**$0**	**$0**	**$0**	**$146**	**$0**

(a) Includes information related to the Special Master.

Source: Unaudited February 28, 2002, DCPS report and the other school districts' offices of special education data.

When comparing attorneys' fees awarded by the courts across school districts, we believe additional factors such as the history and scope of special education programs, as well the likelihood of a district's success in prevailing in IDEA complaints at the administrative or civil level, can significantly affect the number and types of court cases a school district faces. For example, a jurisdiction with a history of difficulties in delivering special education services to its students may have a comparatively higher number of parental administrative complaints and legal suits filed. On the other hand, the history and likelihood of parental success in filing administrative complaints or legal suits may also influence the number of legal complaints filed and, ultimately, the attorneys' fees awarded by the courts to prevailing parties. Therefore, we believe these factors need to be considered when comparing data for attorneys' fees awarded under IDEA across school districts.

As a result of our March 15, 2002, briefing to your staffs, it was agreed that the information provided at that time would satisfy our reporting requirement under section 141; accordingly, we are providing this letter to that effect. If you have any questions about this letter, please contact me at (202) 512-9406 or by e-mail at *franzelj@gao.gov*. We are also sending copies of this letter to the District of Columbia's Chief Financial Officer, the Superintendent of the District of Columbia Public Schools, and other interested parties. This letter is also available at no charge on GAO's home page at *http://www.gao.gov*. Key contributors to this letter were David Bellis, Richard Cambosos, Charles Norfleet, Keith Thompson, and Michelle Zapata.

Jeanette M. Franzel

Jeanette M. Franzel
Acting Director
Financial Management and Assurance

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